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International Court of Justice

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Official Transcript of the International Military Tribunal in the Matter of the United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering, et al, Defendants, sitting at Nurnberg, Germany, on 2 July 1946, 1000-1700, Lord Justice Lawrence presiding.

MARKO ANTONOVA MARKOV -- Resumed

DIRECT EXAMINATION -- Continued

BY COLONEL SMIRNOV:

Q Witness, when did you, together with the other members of the Commission, perform the autopsies of these eight corpses? What date was it exactly?

A That was 13 April, early in the day.

Q And, on the basis of your personal observations, you decided that the corpses were in the ground one and a half years?

A That is correct.

Q Before putting the next question to you, I should like you to give me a brief answer to the following question:

Is it correct that in the practice of Bulgarian legal medicine you make a special art of legal medicine and that this art includes deductions?

A In our practice, as well as in the practice of other countries so far as I know, it is done in the following way: First of all, we give a description and then the deduction.

Q Was a deduction contained in the protocol which you made regarding the autopsy?

A My protocol regarding the corpses on which I performed the autopsy contained only a description without a conclusion.

Q Why?

A Because, from the papers which were there, I understood that they wanted us to say that the corpses were in the ground for three years. This could have been deduced from the papers which were shown to us in the little peasant hut about which I have already spoken.

Q Were these papers shown to you before the autopsy or after the autopsy?

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A Yes, the papers were given us one day before.

THE PRESIDENT: Colonel Smirnov, you are interrupting the interpreter all the time. Before the interpreter has finished the answer, you have put another question. It is very difficult for us to hear the interpreter.

COLONEL SMIRNOV: Thank you, Mr. President.

THE WITNESS: Because the objective deduction regarding the autopsy was not in accordance with the official version, I did not make any deductions.

BY COLONEL SMIRNOV:

Q You did not make any deduction because the objection data which were submitted to you testified to the fact that the corpses had been in the ground, not three years, but oneyear and a half?

THE PRESIDENT: Colonel Smirnov, you must remember that it is a double translation, and unless you pause more than you are pausing, your voice comes in upon the interpreter's and we cannot hear the interpreter.

COLONEL SMIRNOV: Very well, Mr. President.

THE WITNESS: Yes, thatis quite correct.

BY COLONEL SMIRNOV:

Q Was there, among the members of the Commission unaminity, regarding the time the corpses had been in the graves?

A Among the members of the delegation who performed the autopsies and excavations in the Katyn Woods, there were differences of opinion regarding the time the corpses had been buried. Some of them, as for instance, Professor Holm, spoke about immaterial things; as for instance, that one of those who were shot had bruises.. Some of the others, as for instance, Professor Buecklo from Bucharest, cut off some hair from the corpse in order to determine the age of the corpse. I think that that is most immaterial. Professor Palmieri, on the basis of the autopsy that he performed, said that the corpse had been in the ground over a year but he could not determine exactly how long.

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The only one who gave a definite statement in regard to the time the corpses remained in the ground was Professor Miroslavic from Zagreb, and he said it was three years. However, when the German book regarding Katyn was published, I read the result of his objective consultation, and his statement regarding the corpse on which he had performed the autopsy. I had the impression that the corpse on which he had performed the autopsy did not differ in its stage of decomposition from the other corpses. This led me to think that his statement that the corpses had remained in the ground for three years was not a true fact in accordance with his description.

Q I would like to ask you to reply to the following question.

Were there many skulls with pserdo callous which were submitted to the members of the Commission? I should like to say that this term is not very well known in general criminal medicine. I should like you to give us an exact explanation of what Professor Orses, of Budapest, means by the term "pserdo callous."

THE PRESIDENT: Would you repeat that question?

BY COLONEL SMIRNOV:

Q Were there many skulls with signs of pserdo callous which were submitted to the members of the Commission? I should like to remark that as this term is not very well known in the books on legal medicine, I should like to stop and give a detailed explanation of what Professor Orses means by the term "pserdo callous."

THE PRESIDENT: What are you saying the skulls had? You asked if there were many skulls with something or other.

COLONEL SMIRNOV: It is "pserdo callous." It is a Latin term of some sort of corn which is formed on the inside of the skull.

THE PRESIDENT: Can you spell the word in Latin?

(Colonel Smirnov submitted a paper to the President.)

THE PRESIDENT: What you have written here is p-s-e-r-d-o. Do you mean p-s-e-u-d-o, which means false?

COLONEL SMIRNOV: Yes, that is right, "pseudo."

THE PRESIDENT: Now then, put your question again, and try to put it shortly.

COLONEL SMIRNOV: Yes.

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BY COLONEL SMIRNOV:

Q Were there many skulls in various stages of pseudo callous which were submitted to the members of the Commission? Will you please give an exact explanation of this term of Professor Orses?

A Professor Orses spoke to us regarding pseudo callous at a general conference of the delegates. That took place on the 30th of April, in the afternoon, in the building where the field laboratory of Smolensk was located.

Professor Orses understood the term "pseudo callous" as meaning some formation of indissoluble salt of calcium and other salts on the inside part of the skull. Professor Orses stated that, according to his observations in Hungary, this happened if the corpses remained in the ground for at least three years. When Professor Orses stated this at the scientific conference, none of the delegates said anything either for or against it. I deduced from that, that this term "pseudo callous" was also unknown to the other delegates, just as it was to me.

At the same conference Professor Orses demonstrated to us that --

Q (interposing) I should like to answer this for me. What number did the corpse have from this skul was taken which had signs of pseudo callous?

A The corpse from which the skull was taken which was noted in the book bore the number 526. From this I deduced that this corpse was exhumed from the grave before our arrival at Katyn, because all the other corpses on which we performed autopsies on the 30th of April had numbers which ran over 800. It was explained to us that as soon as a corpse was exhumed it immediately got a special number placed on it.

Q Tell me this, please. Did you notice any pseudo callous on the skulls of these corpses on which you, as well as your colleagues, performed autopsies?

A On the skull of the corpse on which I performed an autopsy, instead of brain in the head there was some sort of gruel-like mass, but I never noticed any pseudo callous in the skull. The other delegates-- after the explanation, which they supported -- did not state that they found any pseudo callous in the other skulls. Even P[illegible]z, an assistant, who examined the corpses even before our arrival, did not state that they had noticed any pseudo callous.

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Later on, in a book which was published by the Germans and which contained the report of Butz, I noticed that Butz referred to pseudo callous in order to give more weight to his statement that the corpses had remained in the ground for three years.

Q Did I understand you correctly that of the 11,000 corpses only one skull was submitted to you which had pseudo callous?

A That is quite correct.

Q I should like you to describe to the Tribunal, in detail, the state of decomposition of the clothing which you found on the corpses.

A In general, the clothing was very well preserved, but of course it was impregnated with some things emanating from the decomposition of the corpses. When you pulled the clothing in order to undress the corpses, or when you tried to take off the shoes, the clothing did not tear, nor did the shoes fall apart. I even had the impression that this clothing could have been used again, after having been cleaned. There were some papers contained in the pockets of the clothing of the corpse on which I performed the autopsy, and these papers were also impregnated with corpse fluid.

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Some of the Germans who were present when I was performing the autopsy demanded that I should describe those papers and the contents of those papers; but I refused to do it, thinking that his was not the duty of medical men. In substance I had already noticed the previous day when the papers were submitted to us that with the help of the dates contained in those papers, they were trying to make us think that the corpses had remained in the ground for three years.

Therefore, I wanted to base my deductions only on the actual condition of the corpse. Some of the other delegates who performed the autopsy also found some papers in the clothing of the corpse. The papers which were found in the clothing of the corpse on which I performed the autopsy were put into a record which bore the same number as the corpse, No. 827. Later on, in the book which was published by the Germans, I saw that some of the delegates described the contents of the papers which were found on the corpse.

Q. I should like to ask you to reply to the following question. On what objective medical data did you base your deductions that the corpses remained in the ground not less than three years ?

THE PRESIDENT: Will you put the question again ? I did not understand the question.

COLONEL SMIRNOV: Very well, Mr. President.

BY COLONEL SMIRNOV:

Q. I asked on what objective legal medical data did you base the deductions of the protocol of the medical commission that the corpses remained in the ground not less than three years ?

THE PRESIDENT: Has he said that that was the deduction he made ? Not less than three years ?

THE TRIBUNAL (MR. JUSTICE BIDDLE): He has not said that.

THE PRESIDENT: He has not said that at all. He never said that he made the deduction that the corpses remained in the ground not less than three years.

COLONEL SMIRNOV: He did not make this deduction; but Professor Markov together with the other members of the commission, signed a report of the international commission.

THE PRESIDENT: I know; but that is why I ask you to repeat your question. The question that was translated to us was: On what grounds did you make your deduction that the corpses had remained in the ground not less than three years, which is the opposite of what he says.

Now, will you put the question again?

COLONEL SMIRNOV: Very well.

BY COLONEL SMIRNOV:

Q. I am not asking you about your personal reports, but about the general reports of the entire commission, of which, among other people, you were a member?

THE PRESIDENT: Wait a minute. Now, then, Colonel Smirnov, will you put the question again,

COLONEL SMIRNOV: Yes, Mr. President.

BY COLONEL SMIRNOV:

Q. I was asking, on what grounds, such as objective data of legal medicine, was based not the individual report of Dr. Markov, but the deduction of the eitire commission together, in the international reports that the corpses remained not less than three years in the ground?

A. The collective report of the commission which was signed by all the delegates was very poor regarding the real objective, legal medicaledata. Concerning the decomposition of the corpses, it was stated--there was only one sentence about this in the report--that the corpses were in various stages of decomposition, and there was no description of the real stage of decomposition.

Thus, in my opinion, this deduction was based on papers and on testimony of the witnesses, but not on the actual legal medical data. As far as legal medicine is concerned, they tried to support this deduction by the statement of Professor Orses regarding the finding of psuedo-callous in the skull of the corpse in corpse No. 526. That is my opinion.

Since this skull was the only one with psuedo-callous, it was impossible to arrive at a conclusion regarding the stage of decomposition of thousands of corpses which were contained in the Katyn graves. Fruthermore, the remark of Professor Orses regarding psuedo-callous was made in Hungary; that is to say, in quite different soil and climatic conditions, and only in individual graves and not in mass graves, as was the case in Katyn.

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Q. You spoke about the testimony of witnesses. Did the members of the commission have the opportunity personally to interrogate those witnesses, especially the Russian witnesses?

... We did not have the opportunity of having any contact with the population. Immediately upon our arrival at the hotel in Smolensk, Butz told us that we were in the military zone, and that we did not have the right to walk around in the city without being accompnied by a member of the German military organization, or to speak with the inhabitants of the place or to make photographs; and in reality during the time we were there, we did not have any contact with the local inhabitants.

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In the first day of our arrival in the Katyn woods, that is to say, on the 29th of April, in the first half of the day, before dinner, in the locality where these graves were found, there came under German escort several Russian civilians. Immediately upon our arrival at Smolensk, we were handed personally some of the local witnesses who were half-Russian. When these witnesses were brought to the Katyn woods, we were told that these witnesses were the ones who gave the testimony which was submitted to us. There was no regular interrogation of the witnesses depositions. Professor Orsos started the conversation with the witnesses and he told us that he could speak Russian because he was a prisoner of war in Russia during the first World War. He began to speak with the man who was not very young, whose name, so far as I can remember, was Androv. This entire conversation lasted a few minutes only. As our Bulgarian language is rather similar to the Russian, I tried also to speak to some of the witnesses.

THE PRESIDENT: Don't you think that should be left to cross examination? Can't these details be left to cross examination?

COLONEL SMIRNOV: Yes, Mr. President.

BY COLONEL SMIRNOV:

Q I would ask you, witness, not to reply to this question but to reply to the next question. During the signing of this general report of the entire commission, was it quite clear to you that the murders were perpetrated in Katyn not earlier than the last quarter of 1941 and that 1940, in any case, was excluded?

A Yes, this was absolutely clear to me and thatis why I didn't make any deductions in the report which I made on my findings in the Katyn woods.

Q Why did you sign this general report, after all, which was incorrect according to you?

A In order to make it quite clear under what conditions I signed this report, I should like to say a few words on how it was made up and how it was signed.

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Q Excuse me, but will you please reply to one question. Was this report in reality actually signed on the 30th of April in the town of Smolensk or was it signed on another date and at another place?

A It was not signed in Smolensk on the 30th of April 1943 but was signed on the 1st of May at mid-day, at the airport which was called "Bella".

Q Under what conditions was it signed; will you please tell the Tribunal.

A The writing up of this report had to be made at the same conference which took place in the laboratory of Butz. It was on the 30th of April after mid-day. At this conference all the delegates were present, all the Germans who arrived with us from Berlin, Butz and his assistants, General Holm, the main doctor (Stabsarzt) of the Smolensk sector, and also some other Germans who were unknown to me, the military personnel. Butz stated that the Germans were only present as hosts but actually the most important place was occupied by General Holm and the work was performed on the direction of Butz. The secretary of the conference was the personal secretary of Butz who took down the report; however, I never saw this report. At this conference Butz and Orsos came with a project, a sort of a protocol; however, I was not aware that somebody entrusted to them the writing of such a protocol. This protocol was read by Butz and then a question was raised regarding the stage and the age of the young Pines which were in the clearings of the Katyn woods. Butz considered that inthese clearings --

Q Excuse me for interrupting you. Did you have any evidence that the graves were actually found in these clearings?

A No. When we were present, we didn't find or discover any new graves. So far as some of these delegates stated, they said that they were not competent to express their opinion regarding the age of these trees. General Holm gave us an order to bring a German to this place who was a specialist on forestry. He showed us the cut of the trunk of a tree and from the number of circles in this trunk, he deduced that the age of the trees were five years.

Q Excuse me; I interrupt you again. You, yourself, can you state

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here that this tree was actually growing on top of the grave and not from any other place in the woods?

A I can only say that in the Katyn woods there were some clearings with small trees and that actually, when we were coming back to Smolensk, there was a little tree being transported in the bus with us but I don't know whether there were any graves from the place where this tree was cut. As I have already stated, there were no excavations of graves in our presence.

Q I would request you to continue your reply but very briefly and not to detain the attention of the Tribunal on the details.

A According to the contents of this protocol, there were some editorial notes, the contents of which I cannot remember at present. Then, it was entrusted to Orsos and Butz to write up the protocol in final form. The signing of the protocol had to take place on the same night at a banquet which was organized on the same evening in a German hospital.

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A (Continued) At this banquet Buts arrived with a report and he started reading it, but the actual signing did not take place for reasons which are still not clear to me. It was stated to us that this report would have to be rewritten, so the banquet lasted until three or four in the morning. Then Professor Pangier told me that the Germans were not pleased with the contents of the report and that they were carrying on conversations with Berlin an that, in general, perhaps there would be no report at all.

Having spent the night in Smolensk, on the 1st of May, in the morning, we took off from Smolensk without having signed the repor I personally had the impression that there would be no report at all issued and I was very pleased at that fact. On the way to Smolensk, also on our way back, some of the delegates asked to sto over in Warsaw in order to see the city, but we were told that it was impossible in view of the military situation.

Q This has nothing to do with the subject matter, so I would like you not to speak of it.

A Instead of that, at midday we came to the airport which was called Bela. The airport was apparently a military air field because I saw some temporary military barracks. We had dinner there and immediately after dinner, not withstanding the fact that we were not told that the signing of the report would happen on th way to Berlin, we were submitted copies of the protocol to be sign During the signing many military persons were present, because the were no other people except military personnel on this air field. I was rather struck by the fact that the reports were ready but wer not submitted to us for signing in Smolensk, but this didn't wait so that we might sign these reports in Berlin a few hours later. They were submitted to us for signing at this isolated military ai field. This was the reason why I didn't sign the report, in spite of my opinion at which I arrived during the autopsy which I perfor ed at Smolensk.

Q That is to say, the date and the locality which are shown in the protocol are incorrect?

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A Yes, that is true.

Q And you signed it because you were put into a position where you couldn't do better?

THE PRESIDENT: Colonel Smirnov, I don't think it is proper for you to put leading questions to him. He has stated the fact. It is useless to go on stating conclusions about it.

COLONEL SMIRNOV: Very well, Mr. President. I have no further questions to put to the witness.

THE PRESIDENT: Does anyone want to cross examine him?

DR. STAHMER: Attorney Stahmer, for Goering.

Mr. President, I should like to ask a legal question first. Each side was to call three witnesses before the Court. This witness, as I understand it, has not only testified to facts but has also made statements which can be called an expert judgment. He has not only expressed himself as an expert witness, as we say in German law, but also as an expert. If the Court is to listen to these statements made by the witness as an expert, I should like to have the opportunity for the defense also to call in experts.

THE PRESIDENT: No, Dr. Stahmer, the Tribunal will not hear more than three witnesses on either side. You could have called any expert you wanted or any member of the experts who made the German examination. It was your privilege to call any of them.

BY DR. STAHMER:

Q Witness, since when have you been active in legal medicine

A I have been working on legal medicine since the beginning of 1927; on the University faculty of Legal Medicine in Sofia, first of all as a Professor, and now I am Professor of Legal Medicine at Sofia University. I am not a regular professor at the University. This work could be explained by the German word "Ausserordentlicher Professor" (Extraordinary Professor).

Q Before your visit to Katyn, did your government tell you that you were to participate in a political action without consideration of your scientific knowledge?

A This was not told to me, as such, but I read in the Press

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about the Katyn question as a political one.

Q Did you feel free in your scientific knowledge at the time?

A At what time?

Q At the time when you went to Katyn?

A The question is not quite clear to me and I should like you to explain your question.

Q Did you consider your task a political one or a scientif one, the task which you had to carry out there?

A I understood this task from the very first moment as a political task and therefore I tried not to participate in it.

Q Did you realize the great political importance of this task?

A Yes; from everything I read in the Press.

Q In your examination yesterday you said that when you arrived at Katyn the graves had already been opened and certain corps had been laid out. Do you mean to say that some corpses did not c from the graves at all?

A No, I didn't want to say that, because it was obvious th the corpses were taken out of the graves and I saw that some corps were still in the graves.

Q Then, if I may state this once more, positively, you had no indication that the corpses viewed by the Commission did not com from the mass graves?

THE PRESIDENT: He didn't know where they came from, did he?

THE WITNESS: I didn't have the impression that they were not taken out of the graves which were already excavated.

BY DR. STAHMER:

Q You have already made statements to the effect that, as to the results of the legal medical examination of this Internatior Commission, a protocol, a record was taken down. You have furthermore stated that you signed this protocol.

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DR. STAHMER: Mr. President, this protocol is contained in its full text in the official material published by the German government on this incident. I ask that this evidence, this so-called White Book, be admitted as evidence. I will submit it to the Court later.

THE PRESIDENT: We will adjourn now.

(A recess was taken.)

THE PRESIDENT: Dr. Stahmer, the Tribunal rules that you may cross examine this witness upon the report, and the protocol will be admitted in evidence if you offer it in evidence under Article 19 of the Charter. That, of course, involves that we do not take judicial notice of the report under Article 21 of the Charter, but that it is offered under Article 19 of the Charter, and therefore it will either come through the earphones in cross examination, or such parts of the protocol as you wish to have translated.

BY DR. STAHMER:

Q. Witness, was the protocol or the record signed by you and the other experts in the same way in which it is included in the German White Book?

A. Yes, the record of the protocol which is included in the German White Book is the same protocol which I compiled. A long time after my return to Sofia I was sent two copies of the protocol by General Director Dietz. These two copies were typewritten, and I was requested to make necessary corrections and additions if I judged it necessary, but I left it without corrections and it was printed without any comments on my part.

Q. Just now --

COLONEL SMIRNOV: (Interposing): Mr. President, I believe that there is a slight muddle here. The witness is answering in regard to the individual protocol, whereas Dr. Stahmer is questioning him on the general protocol.

DR. STAHMER: Mr. President, I would have cleared this matter up on my own account.

BY DR. STAHMER:

Q. Do you mean your own protocol?

A. Yes, I mean my protocol which I compiled myself.

Q. What is the relationship of this to the general protocol or record, or rather, when did you receive a copy of this general protocol or record?

A. I received a copy of the general protocol in Berlin when as many copies were issued as had been signed by the delegates. There were a number of delegates.

Q. Just a little while ago you stated that Russian witnesses had been taken before the commission in the forest of Katyn, but that, however, there ha

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been no opportunity afforded the experts to talk with these witnesses concerning the question at hand.

Now, in this protocol, in this record, the following remark is found, and I quote:

"The commission interrogated several indigenous Russian witnesses personally. Among other things, these witnesses confirmed that in the months of March and April 1940, almost daily large railroad transport trains containing Polish officers arrived at the railroad station near Katyn by the name of Nersova. These railroad trains were emptied; the inmates were taken in lorries to the forest of Katyn, and they were never seen afterwards. Furthermore, official notice was taken of the testimony and statements, and the sites containing the evidence were inspected."

A. As I already said, during the questioning which occurred on the spot, these two witnesses spoke to Orses. They actually said that they saw how Polish officers were brought to the railroad station of Nersova and that later they no longer saw them.

THE PRESIDENT: Dr. Stahmer, the Tribunal thinks the witness ought to be given an opportunity of seeing the report when you put passages in it to him

THE WITNESS: Yes.

THE PRESIDENT: Havn't you got another copy of it?

DR. STAHMER: I'm sorry, Mr. President, I don't have an additional copy, no.

THE PRESIDENT: Can the witness read German?

THE WITNESS: No, but anyhow I can understand the contents of the record and report.

THE PRESIDENT: You mean you can read it?

THE WITNESS: Yes, I can also read it.

THE PRESIDENT: Can the witness read German, do you mean?

THE WITNESS: Yes, I can read German.

THE PRESIDENT: Dr. Stahmer, if you have only got one copy, I think you had better have it back. You can't have the book passing to and fro like that.

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DR. STAHMER: I should like to make a suggestion, that the cross examination be interrupted and another witness be called, and I will have this material typed. That would be my suggestion, that we interrupt the cross examination for a minute, call another witness, and then go on from there.

THE PRESIDENT: You can read it. Take the book back.

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DR. STAHMER: Mr. President, I propose to read only short sentences.

BY DR. STAHMER:

Q Yesterday you testified, witness, that the experts restricted or limited themselves to dissecting one corpse only and to carry out an autopsy on only one corpse. In thisreport the following is set down. I quote:

"Of the members of the commission, nine corpses were submitted for autopsy by members personally and numerous, selected cases were submitted for inspection."

Is that right?

A Indeed the members of the commission, who were legal doctors, with the exception of Professor Devile, did open one body. Heim carried out two autopsies.

Q In this instance we are not interested in the autopsy as much as the corpses being inspected.

A They were inspected but only summarily during an inspection which we carried out very hastily on the first day and no individual dissection was carried out but they were inspected as they lay there.

Q I should like to ask you now what is meant in medical science by the concept, under the expression of inspection of corpses?

A We distinguish first of all as to an outer inspection, when the corpse is undressed and inspected and after that there is an inner inspection of the insides, when the inner organs are inspected. This was not done to the hundreds of bodies which were exposed there because this was not possible, it was not physically possible. We were there only before lunch. Therefore, I consider that there was no actual medical legal expert examination of these corpses in the real sense of the word.

Q A little while ago you touched on the trees, tree growth that was found there and you said that an expert explained the age of the trees according to the rings found in their trunks. In the protocol and the report, the following is set down. I quote:

"After the inspection by the members and according to the testimony of Forstmeister vo n Herz, who was called in as an expert on forestry, they were small trees of at least five years of age which had been standing in an

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area of large trees and had been transplanted to this spot about three years ago."

Now, I would like to ask you, is it correct that you undertook a local inspection and that you convinced yourself on the spot whether the statements made by the forestry expert were actually correct?

A Our professional impression and personal conviction as to that only refers to the fact that in the Katyn forest there were clearings where small trees were growing and a German expert showed us a cross-section of these trees. But I do not consider myself competent and cannot make any deduction and I cannot judge whether his deductions were correct, the deductions which are set forth in the report. Precisely for that reason it was judged necessary to call in a forestry expert for we doctors were not competent to do so. Therefore, these conclusions are merely the conclusions of a competent German expert.

Q But after viewing the local situation, after viewing the spot, did you have any doubts whether ese statements or whether this testimony was correct?

A After the German expert had expressed his opinion at the conference of the delegates neither I nor the other delegates expressed any opinion as to whether his conclusions were correct or not and therefore, these conclusions are set down in the report in the form in which the expert expressed himself.

Q After your autopsy, according to your autopsy report the corpse of the Polish officer which you dissected was clothed and in detail you described the clothing. Was this winter or summer clothing that you found?

A It was winter clothing with an outer coat and a woollen tie.

Q In the protocol, in the record, it says further and I quote:

"Furthermore, Polish cigarettes and matchboxes were found amongst the dead in single cases tobacco containers and cigarette butts and the inscription 'Kosielsk' was inscribed thereon.

The question is, did you see these objects?

A These tobacco pouches were ingraved with the name "Kosielsk" thereon. We saw them. They were exhibited to us in the glass cases which were shown us in the peasant hut not far from the Katyn forest. I remember Buch drew out attention to it.

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Q In your autopsy report, witness, there is the following remark and I quote:

"In the clothing documents were found and they were put in safe keeping under the folder number 827."

Now, I should like to ask you how did you discover these documents? Did you personally take them out of the pockets?

A These papers were in the pockets of the overcoat and of the jacket. As far as I can remember they were taken out by a German who was undressing the corpse in my presence.

Q. At that time, were the documents already in the envelope?

A. They were not yet in the envelopes, but after they had been taken out, they were put into an envelope which bore a number, as this was usually done we were told:

Q. What was the nature of the documents?

A. I did not examine these documents, as I have already said, and I refused to do so, but according to the size, I believe that this was a certificate of identity. I could distinguish individual letters, but I did not know whether one could read the inscription, for I did not attempt to do so.

Q. In the protocol the following statement is made, and I quote:

"The documents found among the corpses (diaries, letters and articles from newspapers) dated from the fall of 1939 up until March and April 1940. The last date which up until this time had been fixed was the date of a Russian paper of 22 April 1940."

Now, I should like to ask you if this statement is correct and is it in accordance with the findings that you made.

A. Letters and newspapers were indeed in the glass cases that were shown to us. Some similar papers were found by some members of the Commission who were dissecting the bodies, and if I remember correctly, they were destroyed by them, but I did not do so.

Q. In your examination justa little while ago you stated that few scientific statements were contained in this protocol and that this was done intentionally. I should like to quote from this record as follows:

"Various degrees and types of decomposition were caused by the position of the bodies in the grave and the position that the bodies had one to another. Aside from some mumification at the upper levels and around the edges of these corpses, there is some maceration found among the center corpses -- in other words, the corpses found in the center of the graves. The sticking together of the adjacent corpses and the soldering together of corpses through cadaverous acids and fluids which had been covered over and particularly because of the pressure that obtained which brought about corresponding deformations among the corpses, show a condition of primary preservation of

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the bodies.

"Among the corpses insects or remains of insects which might date back to the time of burial are entirely lacking, and from this we may gather that the shooting and the burial took place at a season which was cold and free from insects."

Now, I should like to ask you if these statements are correct and if they are in line with your findings.

A. I said that little was said on the condition of the preservation of the corpses, and indeed as can be judged by the quotation, one is speaking in general phraseology which concerns the various degrees of decomposition of the corpses, byt there was no concrete or detailed description of the corpses.

As to the insects and their larvae, the assertion of the general report that they were not discovered is in flagrant contradiction to the conclusions of Professor Palmieri, which are recorded in his personal record concerning the corpses which he himself dissected. In this protocol, which is published in the same German White Book, it is said that there were traces of remains of insects and their larvae on the corpses.

Q. Just a little while ago you spoke of the scientific investigation dealing with skulls undertaken by Professor Orses. The record also refers to this matter, and I quote:

"A large number of skulls were examined with respect to the change that might have taken place, which, according to the background and experience of Professor Orses would be of great value in fixing the date of death. In this connection, we are concerned with stratified encrustations at the surface of the mush found in the skull as a residue of the brain. These symptoms are not to be found among corpses which have been in their graves for less than three years. Such a condition, among other things, was found in a very decided form in the skull of corpse number 523, which was found near the surface of a large mass grave."

I should like to ask you now if it is correct that, not only as is said here on the skull of one corpse, but among other corpses, according to the report of Professor Orses such a condition was discovered.

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A I can answer this question quite categorically. We were shown only one skull, and that skull which is precisely mentioned in the report and which was numbered 526. I do not know whether very many other skulls were examined. I consider that Professor Orses had no possibility to examine many corpses in th Katyn Woods, for he came with us and left with us. Therefore, he did not stay in the Katyn Forest any longer than I did, or any longer than any other members of the Commission.

Q Finally, I should like to quote from the summarizing expert opinion. I should like to quote the conclusion, in which it is stated:

"From these statements made by witnesses, the letters and correspondence found among the corpses, the diaries, newspapers, and so forth, it may be seen that the shootings took place in the months of March and April, 1940. The following herewith are in complete agreement -- the materials found among the mass graves, and the pieces of evidence found among these single corpses."

Is this statement actually correct?

THE PRESIDENT: I did not quite understand the statement. As I heard you read it, it was something like this: From the statements of witnesse letters, and so forth --

DR. STAHMER: In complete agreement: The remains found among the mass sites and among the single corpses of the Polish officers. That is at the end of the quotation.

THE PRESIDENT: It doesn't say that the following persons are in complete agreement, but that the following facts are in complete agreement. Is that right?

DR. STAHMER: No. My question is, "Is this statement approved by you? Do you agree with it?"

THE PRESIDENT: Yes, I know, but you read out certain words, which were these: "The following are in complete agreement." What I want to know i whether that means that the following persons are in complete agreement, or whether the following facts are in complete agreement.

DR. STAHMER: Special facts had been set down, and this is a summarizing expert opinion signed by the entire membership of the Commission. Therefore, we are concerned with a scientific statement.

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THE PRESIDENT: Would you just listen to what I read out from what I took down? "From the statements of witnesses, letters, and other documents, it may be seen that the shooting took place in the months of March and April 1940. The following are in complete agreement."

What I am asking you is this.

Just a moment, Dr. Stahmer. Listen to what I say.

What I am asking you is this. Does the statement mean that the following persons are in complete agreement, or that the following facts are in complete agreement?

DR. STAHMER: No, no. The following people testify that this fact, the fact that the shootings took place in these months of 1940, agrees with the statements which they made after looking at the remains in the mass graves and these materials that they found with these single corpses. That is what is meant. That is the finding, that the things which have been found are in agreement with that which has been set down and determined scientifically. That is the meaning.

THE PRESIDENT: Go on.

BY DR. STAHMER:

Q Is this statement, or this finding, in accord with your scientific conviction?

A I have already said that this statement regarding the condition of the corpses is supposed to correspond with the date quoted by the witnesses, but this date is actually in contradiction to that which I myself observed on the corpses which I myself opened. That means that I did not consider that the date which could be deduced from the dissection of the corpses was actually the date named by the witnesses or mentioned in the documents -- that is, the date of the occurrence. If I had been convinced that the condition of the corpses did indeed correspond to the date of death mentioned by the Germans, I would have given a statement in an individual protocol; that is, I would have made a similar statement in my individual protocol. However, I always had doubts.

When I had the signed protocol in my hand, I realized that this last sentence of the report -- the sentence which precedes the signatures -- I realized that this sentence was absent in that draft of the protocol which we saw at the

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conference in Smolensk.

As far as I could understand the draft of the protocol which had been worked upon in Smolensk, in that protocol it was only stated that we were shown papers and that we heard witnesses, and this was supposed to prove that the killings were carried out in March or April of 1940.

I considered that this conclusion was not arrived at on the basis of medical ascertainment, nor was it confirmed by purely medical terminology. That was the reason for the signing of the protocol being retarded and for this protocol not being signed in Smolensk.

Q Witness, at the beginning of my examination you stated that you were fully aware of the political significance of your task. Why, then, did you desist from opposing or fighting this report which was not in accord with your scientific training? Why didn't you protest it?

A I said that I had signed the protocol being convinced that, in the circumstances which had been created on this isolated military spot, there was no other way for me to act, and therefore I could not make any objections.

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Q Why did you not take steps later on ?

A My conduct after the signing of the protocol corresponds fully to what I am stating here. I repeat, I was not convinced of the truth of the German version. I was invited many times to Berlin by Director Tietz. I was also invited to Sofia by the German enbassy. And in Bulgaria, the Bulgarian Minister of Foreign Affairs also invited me to make a statement over the radio or to the press, and I was requested to say what conclusions we had come during our investigation. However, I did not do so, and I always refused to do so. Because of the political situation in which we found ourselves at that moment, I could not make a public statement and declare that the German version was not really the correct one.

Therefore, there were misunderstandings, and there were quite sharp words exchanged between me and the German embassy in Sofia. And when, a few months later, another Bulgarian representative was asked to be sent to prevent a similar commission for the investigation of the corpses in Vinizza in the Ukraine, the German ambassador stated quite openly to the Bulgarian Minister of Foreign Affairs that the Germans did not wish me to be sent to Vinizza.

That showed that the Germans appreciated very well my behavior and my opinion on that matter. In our Ministry of Foreign Affairs, Minister Plenipotentiary Ceratov had some documents, transcripts, which, if the Honored Tribunal considers it necessary, can be sent here from Bulgaria.

Therefore, my abstention from signing, and my refusal to sign, the protocol to carry out any activity with the propaganda aims or responsibilities, I have stated here, namely that the conclusions laid down in the collective protocol do not answer my personal conviction. And I will repeat that if I had been convinced that the Corpses were buried for three years, I would have signed a statement after having dissected a corpse, and I would not have left my personal protocol unfinished; for this is a quite unusual thing in the case of a medical-legal examination.

Q The protocol was not signed by you alone, but on the contrary it carries the signatures of eleven, Dr. Birckler, whose name you gave yesterday, and some of the scientists enjoying world reknown. Among these men is found a scientist of a neutral country, Professor Navile.

Did you take the opportunity to get in touch with one of these experts in the meantime so that the protocol could be corrected or so that you would

bring about a correction of the record ?

A I cannot say for what reason every delegate signed the protocol. But they also signed it in the same circumstances in which I signed it. However, when I read their individual protocols, I see that they also refrained from stating the precise date of the killing of a man whose corpse they had dissected, with the exception, as I have already said, of Professor Miroslavich, who was the only one who asserted that the corpse which he had dissected was that of a man buried for at least three years.

Q Mr. Witness, --

A After the signing of the protocol, I did not have any contacts with any one of these persons who signed the collective protocol.

Q Mr. Witness, you gave two versions, one in the protocol, which we have just discussed, and another here before the Court. Which version is the correct one ?

A I do not understand which second version you mean. Will you please give a complete explanation ?

Q In the first version, in the protocol, it is set forth that according to the personal belongings found and according to your findings, the shooting must have taken place three years ago. Today you testified that the findings were not correct, and between the shooting and the time of your affidavits there could only be a space of perhaps a year and a half.

A I assert that the conclusions of the collective protocol do not answer my personal conviction.

Q "Is in accord", or "was in accord" ?

A This did not tally then and it does not tally now.

DR. STAHMER : I have no further questions.

COLONEL SMIRNOV : Mr. President, I have no further questions to put to this witness.

BY THE PRESIDENT :

Q Witness, was any of the bodies which were examined by the members of this delegation exhumed from the ground in your presence ?

A The corpses which we dissected were selected among the top layers of the graves which had been already exhumed, and they were taken out of them for us to dissect.

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Q Was there anything to show, in your opinion, that the corpses had not been buried in those graves ?

A As far as traces are concerned, and as far as the layers of corpses were preserved, they were stuck to each other; so that if they had been transferred, I do not believe that this could have been done recently. This could not have been done immediately before our arrival.

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Q You mean, that you think the corpses had been buried in those graves?

A I cannot say whether they were put into those graves immediately after death had come, as I have no data to confirm this but they did not look as if they had just been put there.

Q Is it possible, in your opinion as an expert, to fix the date of March or April of for such a short period as that, three years before the examination which you have made?

A I believe that if one relies exclusively on medical data, that is to say, on thestate and condition of the corpses, one cannot--when it is a question of years, it is impossible to determine the precise date with such precision and it is impossible to determine whether they were killed in March or in April; therefore, apparently, this month of March and April were not chosen on the basis of medical data for that would be impossible, but it is based on the testimony of the witnesses and on the documents which were discovered. My Lord, I repeat: But apparently the date of March and April was determined not on the basis of medical data but on the basis of witnesses' testimony or the document which they were discovered.

Q When you got back to Sofia, you said that the protocol was sent to you for your observations and for your corrections and that you madenone. Why was that?

A We are concerned with the individual protocol which I compiled. I did not make any conclusion, I did not add any conclusion because it was sent to me by the Germans and because in general at that moment, the political situation in our country was such that I could not declare publicly thatthe German version was not a true one.

Q Do you mean that your personal protocol alone was sent to you in Sofia?

A Yes, only my personal protocol was sent to Sofia. As to the collective protocol, I brought it back myself to Sofia and handed it over to the Minister here.

Q Is your personal protocol, in the words that you drew it up, incorporated in the whole protocol and signed by all the delegates?

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A In my personal protocol, there is only a description of the corpses and of the clothing of the corpses which I dessected.

Q That isnot the question I asked.

A A description is made only in general protocol and it only concerns the corpse and clothing and the degree of decomposition.

Q Well, do you mean that your personal protocol --

A I consider that my personal protocol, that the personal protocol is more accurate as regards the condition of the corpses--the more so, that they were made out during preparation of dissection and were dictated on the spot to the stenographers.

Q Just listen to the question, please. Is your personal protocol, in the words in which you drew it up, incorporated in the collective protocol in the same words?

A My own protocol is not included in the general protocol but it is included in the book which the Germans had together with the general protocol, in the white book.

Q It is there, then, in the report, is it? It is in the white book?

A Yes, quite right. Quite right, sir.

THE PRESIDENT: The witness can retire. Yes, Colonel Smirnov, do you have another witness?

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COLONEL SMIRNOV: Yes, Mr. President. I beg you to allow me to call as a witness, Professor of Legal Medicine Prosorovski.

PROSOROVSKI, VICTOR ILICH, a witness, took the stand and testified as follows:

BY THE PRESIDENT:

Q. Will you state your full name, please.

A. Prosorovski, Victor Ilich.

Q. Will you repeat this oath after me:

I, citizen of the USSR, called as a witness in this case, solemnly promise and swear before the High Tribunal, to say all that I know about this case, and to add and withold nothing.

(The witness repeated the oath).

THE PRESIDENT: You may sit down.

DIRECT EXAMINATION

BY COLONEL SMIRNOV:

Q. Witness, just before questioning you, I beg you to follow the following order: After my question, please pause in order to allow the interpreters to make the translation, and speak as slowly as possible. I beg you to tell the Tribunal very briefly, and to give the Court some information about your scientific activity, and your past work as a legal doctor.

A. I am a doctor by profession; Professor of Legal Medicine, and a Doctor of Medical Science. I am the Chief Medical Expert of the Ministry of Public Health of the Soviet Union. I am the Director of the Scientific Research Institute for Legal Medicine at the Ministry of Public Health of the USSR; in the main, in the scientific activity, I am President of the Medical Legal Commission of the Scientific Medical Council of Ministry of Public Health of the USSR.

Q. What is your past experience as a medical legal expert?

A. I practiced for seventeen years in that sphere.

Q. What was your participation in the investigation of the mass crimes of the Hitlerites against the Polish officers in Katyn?

A. The President of the Special Commission for the investigation and ascertaining of the circumstances of the shootings by the German Fascist aggressors of the Polish officers; in the beginning of January 1944, the Academician Burdenko offered me the position to lead the Medical Legal Experts Commission. Apart from this organizational activity, I participated personally in the exhumations and examination of these corpses.

THE PRESIDENT: Colonel Smirnov, perhaps that would be a good time to break off.

(A recess was taken until 1400 hours).

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AFTERNOON SESSION

(The hearing reconvened at 1400 hours, 2 July 1946)

THE MARSHAL: May it please the Tribunal, the Defendants Hess, Fritsche, and von Ribbentrop are absent.

COLONEL SMIRNOV: May I continue the examination of this witness, Mr. President?

THE PRESIDENT: Yes.

VICTOR ILICH PROSORDVSKI --Resumed

DIRECT EXAMINATION -- Continued

BY COLONEL SMIRNOV:

Q I beg you to tell me, how far from the town of Smolensk was the burial grounds where the corpses were discovered?

A A commission of experts, together with members of the Special Commission, Academician Burdenka, Academician Tolstoi, and other members of this commission, betook themselves to the burial grounds of the Polish officers in the so-called wood of Katyn. This spot is located about fifteen kilometers from the town of Smolensk. At a distance of about 200 meters from the Witebsk highroad, these burial grounds were situated on a rather abrupt slope. One of these graves was about sixty meters long and sixty meters wide; the other one, situated a small distance from this first grave, was about seven meters long and six meters wide.

Q How many corpses were exhumed by the Commission you headed?

A In the Katyn forest the Medical Commission of Experts exhumed and exhmined, from various graves and from various layers, all together 925 corpses.

Q How was the work of exhumation organized and how many collaborators were called by you for this work?

A Specialists, medical legal experts, participated in the work of this Commission. In September and October, 1943, they had exhumed and examined the corpses of the victims of the Germans and --

Q At what spot did they examine the corpses?

A They examined them in the town and the neighborhood of Smolensk. Among the members of this Commission were Professor Prosorovski, Professor Smolianinov, the Senior Assistant Dr. Semenovski, Professor of Pathological Anatomy Woropaev, Proffessor of Legal Chemistry Schwaikowa, who was invited

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for consultations on legal chemical subjects. With the aid of this Commission, they called also medical legal experts from the military. Among them were Nikolski, Dr. Soubbotine --

Q I doubt whether the Tribunal is interested in all these names. I beg of you to answer the following question: What method of examination was chosen by you? I will explain. Did you investigate the clothes of the corpses? Did you carry out a superficial examination or did you carry out a complete medical dissection of all nine hundred corpses?

A After exhumation of the corpses, they were subjected to a thorough examination, particularly their clothing. Then an exterior examination was carried out and then they were subjected to a complete medical dissection of all three parts of the body; that is to say, the skull, the bronchia, and the thorax, as well as all the inner organs of these corpses.

Q I beg of you to answer me whether the corpses exhumed from these burial grounds bore traces of medical examination carried out previously?

A Out of the 925 corpses which we examined, only three had already been examined, and even then only partial examination of the skulls; but no other traces of former or previous medical examination could be ascertained, for they were clothed and the overcoats were buttoned, their trousers were also buttoned, as well as the shirts, the belts were strapped, the knots of ties had not been undone, and neither in the area of the headnor in the area of the body were there any traces of cuts or other traces of medical examination. Therefore, this excludes the possibility of their having been subjected to any medical legal examination.

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Q During the medical-legal examination which was carried out by your commission, did you open the skulls?

A Of course. In every case the skull was opened and all the areas of the skull were examined.

Q Are you acquainted with the expression "pseudo callous"?

A I heard of it when I received a book in 1945 in the Institute of Medical-Legal Science. Before that, in the Soviet Union, not one medical legal expert observed any similar phenomem.

Q Among the 925 skulls which you examined, were there many cases of pseudo callous?

A Not one of the medical legal experts who was examining these 925 corpses observed lime sediments on the skull surfaces.

Q Therefore, there was no case of pseudo callous on any of the skulls.

Was the clothing also examined?

A As already stated, the clothing was thoroughly examined. Upon the request of the special commission, and in the presence of its members such as Nikolas, Lurdenka, and other members of the commission, the medical legal experts examined this clothing, turned out the pockets of the trousers, of the coats, and of the overcoats. As a rule, the pockets were either torn open or ripped open or cut open, and this testified to the fact that they had already been searched. The clothing itself, the overcoats and the jackets and the trousers as well as the shirts, were moist with the corpse acid. This clothing could not be torn asunder, notwithstanding violent effort.

Q Therefore, the tissue of the clothing was solid?

A Yes, the tissue was very solid, and of course, it was spattered with earth.

Q During the examination, did you look into the pockets of the clothing and did you find any documents in them?

A As I said, most of the pockets were turned out, but some of them remained intact. In these pockets, and also under the lining of the overcoats and of the trousers we discovered, for instance, notes, papers, closed and open letters and postcards,

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cigarette paper, cigarette folders, pipes, and so forth, and even valuables were found, such as ingots of gold and gold dollars.

Q These details are not very relevant, and therefore I beg you to refrain from giving them. I would like you to answer the following question:

Did you discover in the clothing documents dated the end of 1940 and also dated 1941?

A Yes. I myself discovered certain documents, and my colleagues also discovered them. Professor Smolininov discovered on one of the corpses a letter written in Russian, and it was sent by Sophie Zigon, addressed to the Red Cross in Moscow, with the request to communicate to her the address of her husband. The date of this letter was the 12th of September 1940. In addition, on the envelope there was the stamp of a postal office in Warsaw for the month of September 1940, and also the stamp of the Moscow post office, dated the 28th of September 1940.

Another document of the same sort was discovered. It was a postcard addressed from Tarnopol, the post office at Tarnopol, and dated the 13th of November 1940.

Then we discovered receipts with dates, one in particular with the name -- if I am not mistaken -- of Ratkivich, certifying to the receipt of money with the date the 6th of April 1941, and another receipt in his name also referring to a money deposit was dated the 5th of May 1941.

Then, I myself discovered a letter with the date of the 20th of June 1941, with the name of Kuchinski, as well as other documents of the same sort.

Q During the medical-legal examination of the corpses, were any bullets or bullet cases exhumed? I beg you to tell us what was the trade mark of these bullets? Were they Soviet firms or were they foreign firms, and if they were foreign firms, which one, and what was their caliber?

A The cause of death was bullet wounds in the area of the brain. In the case of blind firearm wounds, in the tissues of the

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brain or in the bone of the skull we discovered bullets which were more or less deformed. As to the bullet cases, we did indeed discover, during the exhumation, pistol bullet cases of German origin, for on the cases we found the trademark G-o-c-o, Geco.

Q One minute, Witness.

COLONEL SMIRNOV: I will now read an original German document and I beg the permission of the Tribunal to submit a series of documents which have been offered us by our American colleagues and are submitted as USSR Exhibit 507. It concerns German correspondence on Katyn, and these telegrams are sent by an official of the Government General.

I am only going to read one document, a very short one, in connection with the bullets discovered in the mass graves. I quote: The telegram is addressed to the government of the Government General and to the First Administrative Councillor in Krakow. It is marked "Secret".

"Part of the delegation of the Polish Red Cross returned yesterday from Katyn. The collaborators of the Polish Red Cross have brought with them the bullet cases which were used during the shooting of the victims of Katyn. It appears that these are German munitions. The caliber is 7.55. They are from the firm Geco. A letter follows."

It is signed "Heinrich".

BY COLONEL SMIRNOV:

Q Were the bullets which were discovered by you of the same caliber and did they bear the mark of the same firm?

A As I have already stated, the bullets discovered in the bullet wounds were 7.65 caliber. The cases discovered during the exhumation did indeed bear the trademark of the firm Geco.

Q I beg you to describe in detail the condition of the tissues of the bodies and of the inner organs of the corpses exhumed in the graves of Katyn.

A The skin tissues and the inner organs of the corpses were in a good state of preservation. The muscles of the body

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and of the members had kept their structure. The muscles of the heart had also kept their characteristic structure. The substance of the brain had, in some cases, been subject to certain modification. In most cases, it had kept its structural characteristics quite definitely, especially in the gray and white tissues.

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Changes in the inner organs referred mainly to the diminution of size. The hair from the head could be separated from the skin with little effort.

Q. During the examination of the corpses, to what conclusion did you come as to the date of death and date of their burial?

A. On the basis of the experience I have gained, and that of the other members of the commission --

Q. One moment, witness. I would like you to tell the Tribunal briefly what exactly is that experience, and how many corpses were exhumed personally by you or with your personal intervention on various occasions?

A. In the course of the great national war I had occasion to be medical legal expert during the exhimation and the examination of corpses of the victims shot by the Germans. These executions occurred in the town of Krasnodar and its neighborhood, in the town of Kharkov and its neighborhood, in the town of Smolensk and its neighborhood, in the so-called death camp of Maidanek, Lublin so that in general, and with my personal cooperation, more than five thousand corpses were exhumed and examined.

Q. Therefore, basing yourself on an objective observation to what conclusion did you arriave as to the date of the death and the burial of the victims of Katyn?

A. What I have just said also applies to very many of my colleagues who participated in this work. The entire commission came to the unanimous conclusion that the burial of the Polish officers in the Katyn burial grounds was carried out about two years ago, if you count from January, the month of January 1944, that is to say in the autumn, the fall of 1941.

Q. Does the condition of the corpses give any possibility for you to say that they were buried in 1940, objectively speaking?

A. A comparative medical, scientific examination of the corpses buried in the woods of Katyn, when confronted with the

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modification and changed which were noticed by us during former exhumations on other occasions, and also material evidence, allowed us to come to the conclusion that the date of the burial could not have happened previous to the autumn of 1941.

Q. Therefore, the year 1940 us excluded?

A. Yes, it is completely excluded.

Q. As far as I understand you, besides Katyn, you were also medical legal expert in the case of other shootings in this district of Smolensk?

A. From the district of Smolensk and its environs and with my personal participation 1,173 corpses, besides those of Katyn were exhired and examined. They were exhumed from 87 burial grounds.

Q. To what method of camouflaging did the authorss of these shootings, the Germans, resort in the case of the other mass graves?

A. In the district of Smolensk, in Dirionivka, the following method was reverted to. This method consisted of the following:

On the top layer of dirt of these graves, moss was planted, and in some cases, young trees were planted as well as brushwood all this with a view to camouglagin. Besides, in the so-called "Pioneer Garden" of the town of Smolensk, the graves were covered by bricks and paths were laid out.

Q. You yourself exhumed more than five thousand corpses in various parts of the Soviet Union. What were the causes of death of the victims in most cases?

A. In most cases the cause of death was a firearm bullet wound in the area of the head, in the nape of the neck.

Q. And the picture of death at Katyn, was this picture similar to that which you noticed in other parts of the Soviet Union?

A. All shootings were carried out according to one single method, namely shot in the nape of the neck at close range. The exit or orifice was usually in the area of the forehead or in the

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area of the face.

Q. I will read the last paragraph of your account, mentioned in the report of the Soviet State Commission.

"Commission of experts. Answers:

"Notice the complete similarity of the method of shooting of the Polish prisoners of war with that applied to the Soviet prisoners of war and Soviet civilians, which was carried out on a vast scale by the German fascist authorities during the temporarily occupied territories of the USSR and including those which were carried out near the towns of Smolensk, Orel, Kharkov, Krasnodar and Voronish". Do you corroborate this conclusion?

A. Yes, this was a very typical method of shooting of all the victims of German extermination and of peaceful citizens.

COLONEL SHIRNOV: I have no further questions to put to this witness, Mr. President.

CROSS EXAMINATION

BY DR. STAHMER (Counsel for defendant Goering):

Q. Where is your permanent residence, witness?

A. I was born in Moscow, and live permanently in Moscow.

Q. How long have you been in the Health Commissariat?

A. I have been working in the institutions for public health and in the present Ministry of Public Health since 1931. Before that I was a condiate to the Second Moscow University for Medicine.

Q. In this commission were there foreign scientists?

A. In this commission there were no foreign medical legal experts, but the execution of the examination and exhumation of these corpses was accessible to anybody who wished to look, and also foreign journalists, I believe twelve in number, came to the burial grounds, and I myself demonstrated to them the corpses at the burial grounds, the clothing and so on, as they were very interested to see this.

Q. Were representatives of foreign science present?

A. Again I repeat that no foreign experts were called besides Soviet ones.

Q. Can you give the names of the members of the press?

THE PRESIDENT: Dr. Stahmer, he was giving a long list of names before and he was stopped by his Counsel.

Why do you shake your head?

DR. STAHMER: I did not understand that, Mr. President. I did not understand that he was giving a list of the names. He gave a list of names of the members of the Commission. My question is this: The witness said that members of the foreign press were present there and that the results of the investigation were presented to them. I am now asking for the names of these members of the foreign press.

THE PRESIDENT: Well, go on.

BY DR. STAHMER:

Q. Will you please give me the names of the members of the press, or at least some names of those who were present and to whom you presented the results of theexamination?

A. Unhappily I can not give those names now here, but I believe that if if is necessary, I would be able to find their names -- the names of all those foreign correspondents who were present at the exhumation of the corpses.

Q. The statement about the number of corpses exhumed and examined by you seemed to vary a little, according to my notes, but I may have misunderstood. Once you mentioned 5,000 and one 925. Which figure is the correct one?

A. You did not quite hear. I said that 925 corpses had been exhumed in the Katyn Forest, but in general I and in my presence in many towns of the Soviet Union after the liberation of the territories from the Germans, exhumed and examined more that 5,000.

Q. Were you personally present at the exhumation?

A. Yes.

Q. How long did you work at this exhumation?

A. As I told you, on 14 January, a group of medical-legal experts left fo the site of the burial ground.

THE PRESIDENT: Can you not just say how long it took -- the whole exhumation? In other words, to shorten it, can you not say how long it took?

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THE WITNESS: Very well. The examination of the corpses lasted from 16 to 23 January 1944.

BY DR. STAHMER:

Q. Did you find only Polish officers?

A. All the corpses, with the exception of two which were found in civilian clothing, were in Polish uniforms and belonged to the Polish Army.

Q. Did you try to determine from what camp these Polish officers came originally?

A. That task did not constitute part of my sphere of activity. I was occupied only with the legal-medical examination of thecorpses.

Q. You did not learn in any other way from what camps they came?

A. I can say that when receipts were found with the date of 1941, one could see that there was the number 1-O-A-N. That supposedly means that this was a camp of special assignment.

Q. Did you know of the Kosielsk Campt?

A. Only from hearsay. I have not been there.

Q. Do you know that Polish officers were kept prisoners there?

A. I can say what I heard. I heard that they were, but I myself do not know and have not been there.

Q. Did you learn anything about the fate of these officers?

A. I can not say anything about them, but I spoke of the fate of those officers who were discovered in the graves of Katyn.

Q. How many officers did you find altogether in this grave at Katyn?

A. We did not separate the corpses according to their rank, but, in general, there were 925 corpses exhumed and examined.

Q. Was that the majority?

A. Very many corpses bore on the shoulder straps various insignia or ribbons or officers' rank insignia. I myself did not distinguish them, and up to the presend day I would not be able to distinguish the rank of the Polish officers.

Q. What happened to the documents which were found on the Polish prisoners?

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A. The examination of the clothing was carried out upon request of the Special Commission, and when these experts discovered documents, they handed them over to the members of the Special Commission, either to Academician Burdenka or Academician Tolstoi, or to the other members of the Commission, and apparently these documents are in the archives of the Extraordinary Commission.

Q. Are you of the opinion that from the findings regarding the corpses the time at which they were killed can be determined with certainty?

A. All the members of the Commission, in determining the date of burial of the corpses, based our conclusions on experience gained during previous examinations and also on material evidence which was discovered by legal-medical experts, and this gave us the opportunity to ascertain categorically that the Polish officers were shot in the fall of 1941.

Q. I asked whether from the medical findings you could make a definite statement, whether you could come to any definite conclusion.

A. I can again confirm what I have already said -- that being in possession of vast experience in the sphere of mass exhumations, we came to the conclusion, and we also had in corroboration of these conclusions material evidence, and that is how we came to determine the date of the burial of the Polish officers -- namely, the autumn of 1941.

DR. STAHMER: I have no more questions to put to this witness.

Mr. President, an explanation on the document which was just submitted. I have here only a copy signed by Heinrichs. I do not have the original.

THE PRESIDENT: I imagine the original is there.

DR. STAHMER: Thank you.

THE PRESIDENT: Yes, Colonel Smirnov, do you want to re-examine?

COLONEL SMIRNOV: Mr. President, I have no further questions to put to this witness, but with the permission of the Tribunal, I would like to make a brief statement.

We had to choose from among the 125 witness whom we interrogated in the case of Katyn only three. If the Tribunal is interested in hearing any other

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witness named in the reports of the Extraordinary State Commission, we have, in the majority of cases, adequate affidavits which we can submit on request of the Tribunal. Moreover, any one of these persons can be called to this Court on the request of the Tribunal.

That is all I have to say upon this matter.

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THE PRESIDENT: Dr. Stahmer ?

DR. STAHMER: Mr. President, I have no objection to the further taking of evidence as long as it is on an equal basis; that is, if I have the opportunity to offer further evidence. I also am in a position to call further witnesses and experts for the Court.

THE PRESIDENT: The Tribunal has already made its order; it does not propose to hear further evidence.

DR. STAHMER: Thank you.

THE PRESIDENT: The witness can retire.

THE PRESIDENT: The Tribunal wishes to hear Dr. Bergold with reference to finishing the case of the defendant Bormann, and the Tribunal also understands that counsel for the defendant von Neurath has some documents which he wishes to present.

Dr. von Luedinghausen, have you got some documents for von Neurath ?

DR. VON LUEDINGHAUSEN: Yes.

THE PRESIDENT: Will you present them now ?

DR. VON LUEDINGHAUSEN: Mr. President, I have here two types of documents One type includes the documents which I indicated in my speech during my case to which I called the attention of the Court. They are all in the document books which have been submitted to the Court, and I believe it will be enough to hand these documents to the Secretary.

THE PRESIDENT: Dr. Luedinghausen, you have already offered them in evidence and they all have numbers, have they not ?

DR. VON LUEDINGHAUSEN: Yes.

THE PRESIDENT: Very well.

DR. VON LUEDINGHAUSEN: Then I have a number of documents, probably twelve or fifteen, which have also been included in my document books in translation. However, I have not yet mentioned these documents and have not yet asked the Court to take judicial notice of them. If I may refer to them briefly, they are as follows:

A letter from Mr. von Neurath to Hitler of the 19th of June, 1933.

A copy of the minutes on the withdrawal of the Inter-Allied Military Commission in 1926.

THE PRESIDENT: Will you kindly give them the exhibit numbers which

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they are to have as you offer them in evidence ?

DR. VON LUEDINGHAUSEN: Yes.

THE PRESIDENT: The first one is a letter to Hitler of the 19th of June 1933. What number will that letter have ?

DR. VON LUEDINGHAUSEN: That is number 12.

Number 32, minutes on the withdrawal of the Inter-Allied Military Commission.

Number 50, a speech of Prime Minister MacDonald of the 16th of March 1933

Number 51, an article of Mr. von Neurath on the League of Nations, in the Magazine "League of Nations" of the 11th of May, 1933.

Number 52, Hitler's speech of the 17th of May, 1933, the so-called "Peace Speech".

Number 53, a statement of the German Ambassador in Geneva of the 19th of May, 1933.

Number 54, a statement of the American representative at the Disarmament Conference, Norman Davies, of the 22nd of May, 1933.

Number 55, a statement of the German Ambassador, Nadolny, at the disarmament conference of the 27th of May, 1935.

Number 81, a speech by Benes of the 2nd of July, 1934.

Number 82, an excerpt from the speech of Marshal Petain of the 22nd of July 1934.

Number 83, the communique of the Reich Government of the 26th of July, 1934.

Number 85, the communique of the Reich Government of the 10th of September 1934.

Number 86, a speech of Mr. von Neurath of the 17th of September, 1934.

Number 88, excerpts from the speech of Marshal Smutz of the 12th of November, 1934.

Number 119, a statement of the English Minister in the House of Commons of the 20th of July, 1936.

Those are the documents which I had not yet cited, but which are already contained in my document books.

Mr. President, may I take this opportunity to submit the following application ?

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THE PRESIDENT: Those documents have all been translated, have they not, Dr. Luedinghausen ?

DR. VON LUEDINGHAUSEN: Yes, they are all included, in translation, in the document books which have been submitted.

Mr. President, may I now make an application to the Court ? It is to the effect that the Court should permit me to recall the defendant von Neurath to the witness stand, for the following reason.

As may be recalled, in the course of cross-examination Sir David presented document 3859-PS to the defendant, which document represented a photostatic copy of a letter of the defendant of the 31st of August 1940 to the head of the Reich Chancellery, Lammers, plus two enclosures, in which the defendant asked Lammers to present the two enclosures to Hitler and to obtain a personal conference, if possible, or a report on the question of alleged Germanization. The two enclosures of this letter to Lammers are reports and suggestions on the future formulation of the Protectorate, and concern the assimilation or possible Germanization of the Czech people.

The Court will recall that the presentation of this rather extensive document -- it has thirty or forty pages in this photostatic form -- surprised the defendant, and at that moment he could not recall the matter adequately to give positive and exhaustive information immediately about these documents. Nevertheless, in cross-examination, after a very brief look at these reports he expressed doubts as to whether these reports, as presented here in photostatic form, were actually identical with the reports which were enclosed, according to his instructions, in the letter to Lammers to be submitted to Hitler.

A careful examination of these photostatic copies was not possible in the course of cross-examination, and of course I myself, since I did not know the documents, was not able to comment upon them.

Since Mr. von Neurath was obviously exhausted after the cross-examination it was not possible to examine the question and discuss it with him on the same day; that would have been possible only on the following day.

THE PRESIDENT: Yes, Dr. von Luedinghausen, the defendant may be recalled for the purpose of being asking about these two documents, but of course it is an exceptional license which is allowed on this occasion, because the object of re-examination is to enable counsel to elucidate such matters as this.

You may call him.

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CONSTANTIN VON NEURATH, recalled, resumed the stand and testified further as follows:

THE PRESIDENT: You are still under oath, of course.

DIRECT EXAMINATION

BY DR. VON LUEDINGHAUSEN:

Q. Mr. von Neurath, do you recall the occasion for your letter to Mr. Lammers of the 31st of August, 1940, and your request for him to arrange a conference with Hitler ?

A. Yes. As I said during my examination, in the course of the summer of 1940 I learned that various Reich and Party agencies, particularly the Gauleiters of the neighboring Gaus and Himmler, had sent more or less radical reports and suggestions to Hitler. I knew that Himmler particularly made quite extreme suggestions regarding a distribution of the Protectorate area, and complete destruction of the Czech nationality and the Czech people. These agencies were urging Hitler to realize these plans immediately.

Since I, as has already been emphasized, was absolutely opposed to such plans and, to the contrary, wanted the Czech people as such and their nationality retained and preserved from Himmler and his intentions to destroy it, I decided to make an attempt to induce Hitler not to realize any Germanizati on plans, but to forbid them and to send a categorical order to this effect to the Party and its agencies.

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Q Do you recall how these two reports came about, which were to be included in your letter to Lammers?

A As far as I can recall, the thing happened as follows. Either I myself dictated a report or I had one of my officials draw it up according to my instructions; I believe the latter. But I recall exactly that this report was much briefer than the one submitted here in photostatic copy.

I recall furthermore that the conclusions drawn in it were similar, but much sharper, and that the whole problem had to be considered very carefully.

Q Now, how and why did the second report of Frank come about?

A From the various discussions which I had with Frank, I knew that he, too, was opposed to this splitting of Czech territory and the evacuation of the population as proposed by Himmler, and that he shared my opinions, at least to that extent. Therefore, I considered it expedient, since Hitler had assigned Frank to me as state secretary because he knew the Czech country and people very well, to point out to Hitler that this man was opposed to Himmler's plans, too, and advised Hitler against accepting them.

Q For what reason, however, in your letter to Lammers did you especially emphasize that you shared the opinions expressed in Frank's report?

A I considered it correct to do this, because Frank was a member of the SS, and a subordinate and confidant of Himmler. On the other hand, I knew that already at that time, because of my attitude towards the Czech people, which he considered much too mild and cooperative, Hitler was prejudiced against me, and I was, therefore, convinced that together with Frank I would be more likely to be successful in influencing Hitler than if I went to him alone.

That was the reason why I suggested that Frank should participate in the report. For the same reason, I did not write directly to Hitler, as I should otherwise, but to Lammers. According to previous experience, I had to assume that if I had written directly to Hitler, who was not in Berlin at the time, he would either not read the report at all, or would refer it to Himmler.

Q How was this letter to Lammers and its drafting handled in your office?

A I had the draft of the report of Frank shown to me. Then I dictated my letter to Lammers, and I sent it with my report and Frank's draft back to Frank's office for a clear copy of the Frank report to be made and for the letter

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to Lammers with the two reports to be sent off.

I did not see the letter to Lammers and the two reports again before they were sent out, and I did not see them in Berlin at the conference with Hitler.

Q My last question is this. How did you reach the conviction that the photostatic copies submitted here of the two reports could not be identical with the reports which were enclosed in the letter to Lammers, according to your instructions?

A As for the first report, which I prepared, I have already stated that according to my recollection, it was much shorter than the one submitted here in photostatic copy. Furthermore, this photostatic copy does not bear my signature, not even my initials. But it is out of the question that the copy of this report which was enclosed in the letter to Lammers would not have been signed, or, at least, initialed by me; and the notice of correctness, which is remarkably unsuited to this report prepared by an SS Obersturmbanfuehrer, is not signed. The photostatic copy which is said to have been enclosed in the letter to Lammers does not even bear my initials.

The most noticeable thing, however, is the notice of correctness on the photostatic copy. This can have a meaning only if the document enclosed in the letter to Lammers did not bear my signature and was enclosed in the letter nevertheless.

But since the copy which I gave to Frank's office to send on to Lammers was certainly signed by me, this notice indicates that not the report signed by me was enclosed in the letter sent to Lammers, but another one prepared by Frank or by officials in his office. And, as for Frank's own report, the text of the photostatic copy here, to my definite recollection, is not identical with the text of the report which I approved and which I sent on together with my report to Lammers.

THE PRESIDENT: Dr. von Luedinghausen, we have heard the explanation more than once, I think, that the enclosure which was in the letter was not the same as the one which he drew up. It does not get any more convincing by getting told over again.

DR. von LUEDINGHAUSEN: I only wanted to express it again. But if the Tribunal believes that that explanation is sufficient, I may dispense with it.

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THE WITNESS: Mr. President, may I please explain that I can only imagine how this took place? I am convinced that if the two photostatic copies submitted here were actually enclosed in the letter to Lammers, they were prepared in Frank's office, and enclosed without my knowledge in place of the reports which I had prepared. Another possibility would be, of course --

THE PRESIDENT: We are quite as able to imagine possibilities as you are.

The fact is that the letter was signed in his name, was it not? The letter itself was signed?

DR. von LUEDINGHAUSEN: Yes.

THE PRESIDENT: And he refers expressly to the enclosure?

DR. von LUEDINGHAUSEN: Yes.

THE PRESIDENT: Very well; we understand it.

DR. von LUEDINGHAUSEN: Yes. I wanted it to be made clear to the Court. These remarkable characteristics of the two reports could not be examined in detail at the moment of cross-examination.

I have no further questions, Mr. President.

THE PRESIDENT: Then the defendant can return to the dock.

Do you want to ask any questions, Sir David?

SIR DAVID MAXWELL FYFE: My Lord, I do not think so. If the Court would just allow me, I should like to look at the document while the court is recessed and see whether there is any point that I might like to question on.

THE PRESIDENT: We will recess now.

(A recess was taken.)

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SIR DAVID MAXWELL-FYFE: I have considered the matter and I think it is really in the stage of argument and not cross examination but, my Lord, I should like your Lordship just to observem as the matter has been raised, that there is a certificate given by Captain Hochwald on behalf of General Ecer, which states that the exhibit which was put in is a photostat taken from the original of a document found in the Archives of the Reich Protector's office in Prague, so that that theory appears from the certificate and the exhibit, that the copy-letter to Dr. Lammers and the two memoranda were reserved and found in the office of the Reich Protector. I don't want to say anything further in the matter.

THE PRESIDENT: Let the defendant come back to the witness box. Oh, no he needn't come back. Dr. Bergold.

DR. KRANZBUEHLER: (Counsel for Doenitz.) Mr. President, since Dr. Bergold is absent at present, I should like to ask whether I may submit the three outstanding documents, outstanding in my case.

THE PRESIDENT: Very well, Dr. Kranzbuehler.

DR. KRANZBUEHLER: I am offering as Doenitz Exhibit 100, the affidavit deposed by the Chief of the American Navy, Nimitz, as to U-boat war against the Jap navy. It is already known that I was to present it. I need not read this affidavit for in my final presentation of my argument, I shall refer to this point.

THE PRESIDENT: The Tribunal would like to have the document read, Dr. Kranzbuehler.

DR. KRANZBUEHLER: Very well, Mr. President. I have the original text in English, Mr. President, and I shall therefore read in English. "At the request of the International Military Tribunal, the following interrogatories were on this date, 11 May 1940, put to Fleet Admiral Chester W. Nimitz ....

THE PRESIDENT: You must have given the wrong date -- 1946, isn't it ?

DR. KRANZBUEHLER: 11 May 1946.

THE PRESIDENT: Yes, go on.

DR. KRANZBUEHLER: " ... put to Fleet Admiral Chester W. Nimitz, U.S. Navy, by Lt. Commander Joseph L. Broderick, United States Naval Reserve, of the International Law Section, Office of the Judge Advocate General, Navy Department, Washington, D. C., who recorded verbatim the testimony of the witness. Admiral Nimitz was duly sworn by Lt. Commander Broderick and interrogated as follows:

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"QUESTION: What is your name, rank and present station ?

"ANSWER: Chester W. Nimitz, Fleet Admiral, U.S. Navy, Chief of Naval Operations of the United States Navy.

"QUESTION: What positions in the United States Navy did you hold from December 1941 until May 1945 ?

"ANSWER: Commander-in-Chief, United States Pacific Fleet.

"QUESTION: Did the United States of America enter sea warfare against Japan and announce certain waters to be areas of operation, blockade, danger, restriction, warning, or the like ?

"ANSWER: Yes. For the purpose of command of operations against Japan, the Pacific Ocean areas were declared a theatre of operation.

"QUESTION: If yes, was it customary in such areas for submarines to attack merchantmen without warning, with the exception of her own and those of her Allies ?

"ANSWER: Yes, with the exception of hospital ships and other vessels under safe conduct voyages for humanitarian purposes.

"QUESTION: Were you under orders to do so ?

"ANSWER: The Chief of Naval Operations on 7 December 1941, ordered unrestricted submarine warfare against Japan.

"QUESTION: Was it customary for the submarines to attack Japanese merchantmen without warning outside of announced operations or similar areas since the outbreak of the war ?

"ANSWER: The reply to this interrogatory involves a matter outside of the limits of my command during the war; therefore, I make no reply thereto.

"QUESTION: Were you under orders to do so ?

"ANSWER: The reply to this interrogatory involves a matter outside the limits of my command during the war; therefore, I make no reply thereto.

"QUESTION: If the practice of attacking without warning did not exist since the outbreak of the war, did it exist from a later date on; from what date on ?

"ANSWER: The practice existed from 7 December 1941 in the declared zone of operations.

"QUESTION: Did this practice correspond to issued orders ?

"ANSWER: Yes.

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"QUESTION: Did it become known to the United States Naval authorities that Japanese merchantmen were under orders to report any sighted United States submarines to the Japanese armed forces via radio ? If yes, when did it become known ?

"ANSWER: During the course of the war, it became known to the United States Naval authorities that Japanese merchantmen in fact reported by radio to Japanese armed forces any information regarding sighting of United States submarines.

"QUESTION: Did the United States submarines thereupon receive the order to attack without warning, Japanese merchantmen; if this order did not exist already before, if yes, when ?

"ANSWER: The order existed from 7 December 1941 .

"QUESTION: Did it become known to the United States Naval authorities that the Japanese merchantmen were under orders to attack any United States submarine in any way suitable according to the situation; for instance, by ramming, gunfire, or by depth charge; if yes, when did it become known ?

"ANSWER: Japanese merchantmen were usually armed and always attacked by any available means when feasible.

"QUESTION: Did the United States submarines thereupon receive the order of attacking without warning, Japanese merchantmen; if this order already did not exist before, if yes, when ?

"ANSWER: The order existed from 7 December 1941.

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"Question: Were, by order or on general principles, the United States submarines prohibited from carrying out rescue measures toward passengers and crews of ships sunk without warning in those cases where by doing so the safety of their own boat was endangered?"

"Answer: On general principles, the United States submarines did not rescue enemy survivors if undue additional hazard to the submarine resulted or the submarine would thereby be prevented from accomplishing its further mission. United States submarines were limited in rescue measures by small passenger carrying facilities combined with the known desperate and suicidal character of the enemy. Therefore, it was unsafe to pick up many survivors. Frequently survivors were given rubber boats and/or provisions. Almost invariably survivors did not come aboard the submarine voluntarily and it was necessary to take them prisoner by force."

"Question: If such an order or principle did not exist, did the United States submarine actually carry out rescue measures in the above mentioned cases?"

"Answer: In numerous cases enemy survivors were rescued by United States submarines."

"Question: In answering the above question, does the expression 'merchantmen' mean any other kind of ships than those which were not warships?"

"Answer; No. By 'merchantmen' I mean all types of ships which were not combatant ships. Used in this sense, it includes fishing boats, etc."

"Question: If yes, what kind of ships?"

"Answer: The last answer covers this question."

"Question: Has any order of the United States Naval authorities mentioned in the above questionnaire, concerning the tactics of the United States submarines toward Japanese merchantmen, been based on the ground of reprisal?"

"Answer: The unrestricted submarine and air warfare ordered on 7 December 1941 resulted from the recognition of Japanese tactics

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revealed on that date. No further orders to United States submarines concerning tactics toward Japanese merchantmen, throughout the war, were based on reprisal, although specific instances of Japanese submarines committing atrocities toward United States merchant marine survivors became known and would have justified such a course."

"Question: Has this order or have these orders of the Japanese government been announced as reprisals?"

"Answer: This question is not clear. Therefore I make no reply thereto."

"Question: On the basis of what Japanese tactics was reprisal considered justified?"

"Answer: The unrestricted submarine and air warfare ordered by the Chief of Naval Operations on 7 December 1941 was justified by the Japanese attacks on that date on United States bases and on both armed and unarmed ships and nationals without warning or declaration of war."

"The above record of testimony has been examined by me on this date and is in all respects accurate and true." Signed, Chester W. Nimitz, Fleet Admiral, United States Navy.

This document bears the Number, Doenitz 100.

As my next document I should like to submit an expert opinion given by the former judge, Jaeckel, about the sentences given by Naval Courts for the protection of the indigenous population when they were attacked. This document has been admitted by the High Tribunal and is present in translation and because of that fact I do not need to read it.

THE PRESIDENT: Will you give us the number?

DR. KRANZBUEHLER: Doenitz 49, Mr. President.

Then, Mr. President, some weeks back I made application to admit extracts from the protocols of a war crimes court at Oslo. These had been used by the prosecution on the occasion of the cross examination of Grand Admiral Doenitz. At that time they were not assigned a number. From these records I selected some extracts which

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are meant to prove that in the case of the torpedo boat No. 345, whose crew were shot because of the commando order, that this was a boat which was acting on sabotage mission and in dealing with the treatment of these prisoners the Commander in Chief of the Navy, specifically, Admiral Doenitz, was not notified of the treatment accorded these men; that, on the other hand, this question was handled and disposed of directly through discussions between Gauleiter Terboven and the Fuehrer's Headquarters. I am asking that the

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High Tribunal admit this asa piece of evidence, since this document was used by the Prosecution. The number I shall assign to it will be Doenitz No. 107.

COLONEL PHILLIMOR : Your Honor, I don't know if the Tribunal has got before it the answer which the prosecution have put into this application.

THE PRESIDENT: Yes, we have just looked at it now.

COLONEL PHILLIMORE: Broadly speaking, it comes to this, that we are quite prepared to put in the whole proceedings but we should object to extracts being put in; that is, amongst the affidavits and the evidence of some of the witnesses material to support the points for which Counsel for Defendant Doenitz contends. There is, on the other hand, a body of evidence the other way on all those points. That is why, your Honor --

THE PRESIDENT: Wouldn't it save translation if you put in the passages in the document upon which you rely?

COLONEL PHILLIMORE: If that would be more convenient, My Lord, we can do that.

THE PRESIDENT: I don't know how long the document is. It may be very long indeed.

COLONEL PHILLIMORE: The whole proceedings are very long. The trial lasted for four days.

THE PRESIDENT: Then it would be appropriate that you should pick out the parts on which you rely and Dr. Kranzbuehler can put in --

COLONEL PHILLIMORE: MY Lord, it is put in the answer that the document which was proved in the Defendant's case against this Defendant was an affidavit by the Judge Advocate, who wet out the effect of the evidence accepted by the Court.

THE PRESIDENT: The Tribunal follows that, but it thinks that it is desirable that you should put in the passages upon which you rely as well as the defense counsel.

DR. KRANZBUEHLER: May I submit this document, Mr. President?

THE PRESIDENT: What is the number again, please?

DR. KRANZBUEHLER: No. 107, Mr. President.

THE PRESIDENT: And it contains extracts from these proceedings, does it?

DR. KRANZBUEHLER: Yes, extracts.

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THE PRESIDENT: The prosecution will put in their extracts and we will consider them both.

DR. KRANZBUEHLER: Mr. President, then I have a question dealing with the documents of the case which we have just dealt with, the case of Katyn. The witness, Professor Markov, mentioned the expert opinion given by the Italian exper, Professor Palmieri, as a piece of evidence for the reason that insects had allegedly been found among the corpses. These insects are not mentioned, but rather, larvae are mentioned in this expert opinion, and to me the difference is that insects are flying about during the summer whereas larvae hide and conceal themselves during the winter months.

Mr, President, may I submit this document?

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COLONEL SMIRNOV: Mr. President, I should like to make just one factual remark. In the protocol of Professor Palmieri it was indicated that the larvae were discovered inside the clothes of the corpses. I don't know where the insects were found. That is why I don't think that the presentation of the document by defense counsel should be permitted.

THE PRESIDENT: Dr. Kranzbuehler, you are specifying a particular document referred to in the White Book, is that right?

DR. KRANZBUEHLER: Yes, Mr. President.

THE PRESIDENT: And you mean the whole of the document?

DR. KRANZBUEHLER: That document is only about one page long, Mr. President.

THE PRESIDENT: Then you may put it in, subject to its being translated

DR. KRANZBUEHLER: Very well, Mr. President.

COLONEL SMIRNOV: Mr. President, we are talking about one document whic is a report on the dissection of the corpses performed by Professor Palmieri. This is just a protocol of the dissection by Professor Palmieri.

THE PRESIDENT: Is it referred to in the conclusions or not?

DR. KRANZBUEHLER: It is put in on the same basis as the testimony of Professor Markov. It is the findings on the autopsy which Professor Palmieri performed.

THE PRESIDENT: Very well.

DR. KRANZBUEHLER: Mr. President, I have another document which I should like to introduce in the case of Katyn, which I received from Polish sources just a few days ago. This is a document set down in England, which was published in London in 1946. The title is, "Report on the Massacre of Polish Officers in the Katyn Wood."

In this document Polish sources are used, and I should like to submit this document to the High Tribunal as evidence. However, before I set up certain pieces of evidence and proof, I would like to ask that the High Tribunal examine this document, for there may be doubts whether it actually can be used as a piece of evidence.

THE PRESIDENT: Dr. Kranzbuehler, this document is printed for private circulation only. It has no printer's name on it, and it is entirely anonymous.

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DR. KRANZBUEHLER: Yes, Mr. President, those were my own doubts. That is why I voiced them. I submitted this document because of the significance of this case. I thought the Tribunal nevertheless would want to take notice of this document and its contents.

THE PRESIDENT: No, the Tribunal thinks it would be improper to look at a document of this nature.

GENERAL RUDENKO: Mr. President, I should like to make one remark because the statement of the defense counsel that this document was received from the Polish Delegation astounds me. I should like to know from what Polish Delegation he received this document, because the Polish Delegation of the Polish Government could not possibly possess such a Fascist document as this.

THE PRESIDENT: I think General Rudenko misunderstood what Dr. Kranzbuehler said.

DR. SAUTER (Counsel for the defendant Funk): Mr. President, five interrogatories were granted to me on behalf of the defendant Funk. When I presented my case, I could not submit these affidavits because they had not been translated.

In the meantime, I have received these translations, and the translations have been submitted to the High Tribunal. I ask your indulgence in permitting me to submit them to the High Tribunal at this point.

One of these affidavits, in Document Book Walter Funk, Supplement No. 2, will be assigned Exhibit No. 16. This is a rather extensive interrogation of the witness Landfried who was active in the ministry of the defendant Funk in the capacity of a state secretary. I do not believe I need to read this record in detail, but the first question deals with the economic policy represented by Funk as he exercised it in the occupied countries. He expressly pictures it in the same way as it was pictured by Funk.

Under No. 2, he deals with the directions given by the defendant Funk to the military commanders and to the Reich commanders of the occupied countries.

Then, under Question 4, the witness deals with the question of the exploitation and plundering of the occupied territories. He confirms the fact, and testifies to it, that the defendant Funk always opposed plundering, that he fought the black market, that he opposed devaluation of the currency and foreign exchange, that he tried to maintain currency on an even keel.

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In Question 5, in a detailed reply, he pictures how the defendant Funk tried to avoid financial overburdening of the occupied countries, specifically, to have the costs of occupation lowered to the lowest possible level.

In answering other questions, such as part 2 of Question 11, the witness explains the activities of the defendant Funk in the Ministry of Economics, specifically German preparations in the event of a war.

Then, in reply to Question 12, the witness examines the position of the General Plenipotentiary for Economy, and he concludes that in practice it was just a matter of paper.

However, I do not wish to read these rather detailed statesments and take up the valuable time of the High Tribunal, for in the main these are only repetitions of statements that have already been made.

In the last two questions, Questions 14 and 15, the witness Landfried who, as I have already said, for years was the deputy of the defendant, describe the entire personality of the defendant, his attitude toward the problem of terror, and the fundamental attitude that he represented as to the use of foreign workers.

Mr. President, I ask that the High Tribunal take judicial notice of this rather extensive work, and I have just quoted it briefly.

The next interrogatory was deposed by the witness Emil Puhl. This was the same witness who was interrogated in this courtroom about other questions. This is the interrogatory and the answers of the witness Emil Puhl, Document Book Funk, Supplement No 3.

THE PRESIDENT: Dr. Sauter, has this interrogatory been granted?

DR. SAUTER: Yes, Mr. President.

THE PRESIDENT: He gave his evidence. We don't generally allow interrogatories to witnesses who have given their evidence.

DR. SAUTER: Mr. President, the matter was like this: As far back as December I had asked to be granted this interrogatory and repeatedly asked about it, but it did not arrive. During two days of cross examination, this witness Emil Puhl was questioned on entirely different matters, and was brought in for an entirely different matter by the Prosecution, the matter of gold

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teeth, and the SS relation to these gold teeth. This matter, as raised by the Prosecution, was not the same as the matter granted for my interrogatory. I believe I was granted this in February.

THE PRESIDENT: Dr. Sauter, what I mean is this: Supposing the Tribunal is asked to grant an interrogatory and it grants the interrogatory, and then the witness is subsequently called to give evidence. When he is called to give evidence, he ought to be questioned upon all the matters which are relevant to the trial. The Tribunal doesn't want to have to read his evidence in one place and then his interrogatory in some other place.

Is there any objection, Mr. Dodd, to accepting it in this case?

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MR. DODD: No, I have no objection, Mr. President. That is the situation. It was granted before Puhl was called. He was called here for cross-examination and I do not recall off-hand whether or not counsel inquired concerning these matters that are contained therein. We have no objections. It may be some annoyance to the Tribunal which we regret.

DR. SAUTER: Mr. President, the witness Puhl during his examination as to the french camps, had questions submitted to him on cross-examination and they were answered by him as the Prosecution suggested. Therefore, he was not only interrogated about the questions that I put to him but also the questions put by the Prosecution were submitted to him. Therefore, I shall submit this document, which is an interrogatory deposed by Emil Puhl, document book of Walter Funk, supplement number 3 and shall be assigned the exhibit number 17.

This witness Puhl, the Reichspresident of the Reichsbank, in this interrogatory, deals solely with matters entirely different from the matters dealt with here in his examination. He dealt with the preparations which the Reichspresident, the Reichsbank President, Dr. Funk, made in the war. That was one point.

Then the second point he deals with the devaluation of the Danish currency.

THE PRESIDENT: I think the Tribunal thinks you need not read the interrogatory but the Tribunal will allow it to go in in this case.

DR. SAUTER: Very well, Mr. President. I wanted to sketch the contents to you briefly.

Then I should like to submit additional testimony given by a witness. This has already been granted by the Tribunal and is the testimony given by Heinz Kallus, to be found in document book Walter Funk supplement 4 and shall be assigned exhibit number Funk 18 and I should like to submit this testimony to the general secretary and I should like to ask, in order to save time, that the Tribunal take judicial notice of the contents of the testimony offered.

As my fourth and last document I should like to submit an affidavit deposed by Mr. Messersmith, a supplement to a statement he has already made,

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which has been submitted to the Tribunal. This is very brief, in fact it is but one sentence and it may be found in Walter Funk supplement number 5 and shall be assigned exhibit number 19.

I should like to submit this book as well. And now I have arrived at the conclusion of my report, Mr. President. Thank you very much.

DR. THOMA (Counsel for defendant Rosenberg): Mr. President, I should like to submit to the Tribunal the testimony of the witness Beil. Up to now I have received this only in English. I should like to submit this at RO 50. I had this given back to me by the translation department.

This interrogatory contains important questions dealing with the attitude taken by theEastern Ministry in the recruitment of labor and it is of such significance that I ask the permission of the Tribunal to read it or to have it read. Since I am not entirely conversant with the English language I should like to ask to have an interpreter read this interrogatory.

THE PRESIDENT: Dr. Thoma, has this document been offered in evidence before? It was granted, was it, by the Tribunal, this interrogatory?

DR. THOMA: Yes, indeed, Mr. President.

THE PRESIDENT: Is it necessary to read it? Cannot you submit it in evidence and the Tribunal will consider it?

DR. THOMA: I should leave that to the discretion of the Tribunal. I wanted to point out only that this is very important testimony which is decisive as to the treatment of manpower by the Eastern Ministry. However, I shall leave that to the judgment of the Tribunal.

THE PRESIDENT: Cannot you summarize it?

DR. THOMA: Mr. President, I have only an English copy. I have only an English version and I do not wish to attempt to do anything withit but there are only two pages. I believe the interpreter will read that in no time at all.

THE PRESIDENT: Let the interpreter read it then.

(ENGLISH INTERPRETER READ THE DOCUMENT AS FOLLOWS:)

"Copy -- RO Exhibit Number 50.

"Completed interrogatory of Ministerialrat.

"Dr. Beil behalf of Rosenberg.

"The witness having been duly sworn, states:

"Q Were you the permanent official (Sachbearbeiter) in the East Ministry (Ost Ministerium) in charge of the questions of labor and social policy?

"A Yes, I was one of ten permanent officials. We originally started with 52 but as the East Front receded the staff was finally reduced to ten. I was in charge of the administration side of the labor and social policy. The head of the department was Landesbauernfuehrer Peukert.

"Q Was the East Ministry in favor of voluntary recruiting of workers in the East?

"A Yes, of voluntary recruiting only, my instructions being that it should only be carried out on this basis.

"Q Are any results known?

"A Yes, but the results were not as great as anticipated, only some 300,000 to 400,000 volunteers andmost of these were from Ukraine, Lithuania and Estonia.

"Q Were there any negotiations about decreasing the quotas ordered by the GBA?

"A Yes, negotiations for decreasing the quotas took place but broke down owing to Sauckel demanding something like a million workers to be transferred to the interior.

"Q Who was responsible for the care and control of the East Workers (Ostarbeiter) in the Reich?

"A The German Arbeits Front and the Reichsnahrstand were responsible for the care of the East workers, the former for workers in munitions and heavy industry and the latter for agricultural workers.

"Q What was the point of view of the department, ASO, ---".

DR. THOMA: That, if I may interrupt, was the working social and political department of the East Ministry.

(INTERPRETER CONTINUING)

"Q What was the point of view of the department, ASO, concerning the treatment of the East Workers in the Reich?

"A The viewof my department ASO was that the voluntary recruiting of workers on a free movement basis, thus taking them out of the bashedwin enclosed factories, would be the best method of treatment. We also advocated the removal of the armbadges worn originally on the arm and later on the left wrist, which carried the word 'East' so as to distinguish them from workers

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from the West, who never at any time wore badges. The wording being later changed to 'Greater Russia', 'White Russia' and 'Ukraine', the people from the Baltic States did not wear the arm badge. Certain Russians, small groups of Cossacks, Tartars and one or two others were not compelled to wear the arm band, as they were anti-Bolshevistic and pro-German and a certain proportion of these were eventually called up into the German Army. Some 7,000 youths for Ruthania were called up by ASO and these were apprenticed at Junkers Works.

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"Q. Is the Central Office (Zentralistelle) for the Eastern Peopl (Ostvoelker) at the East Ministry known to you? How is this organized?

"A. Yes, it was considered to be a consulate for the East; members of the Staff were partly Germans and partly local employees from the East who were considered suitable for such employment. Some of the foreign employees were placed at the disposal of the County offices to look after the interests of their fellow countrymen working in the countries. At the Central Office were instituted offices for each of the Eastern States, each office being controlled by a German, some of whom had originally come from these States. There was also a Welfare Branch which was run by persons from these Eastern States, to look after the comfort, etc., of their individual countrymen; there was also a religious branch which was run by clergy from these countries, but this branch was not very successful as there was an insufficiency of priests.

"Q. Now, with the help of the DAF, were the complaints followed up??

"A. The interests of foreign workers were always looked after; missions were sent to the various concentration of East workers to find out how they were progressing and what kind of treatment they were receiving. These missions dealt with complaints submitted to them on their visists, but the Central Office had to deal also with written complaints received through the post.

"Q. Is a printed circular to the authorities in the country known to you that ordered just treatment? Details? What was the story about the families who were evacuated by the Army Group Center and about the childre 10-14 years old?

"A. Yes, there was a circular issued, dealing with this question, and it gave details at great length for the just treatment of the East workers. This circular was issued at the request of the Ministry of the East, through Saukel. A second circular was issued by Rosenberg dealing with the just treatment of workers

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from the East only. I have no knowledge of this story, as this was dealt with entirely by the Army Group Center.

"Q. Does the witness know the pamphlet issued by the East Ministry to the managers of enterprises concerning the nations of Eastern Europe and the attitude towards them?"

THE PRESIDENT: Dr. Thoma, that affidavit does not seem to be short at all. It all seems to be cumulative. Every word of it is what we have heard before, and heard not only once, but over and over again.

THE INTERPRETER: Dr. Thoma has just said that the last sentence is coming up.

DR. THOMA: Two short sentences.

THE INTERPRETER: "There were two pamphlets issued; one issued by Saukel, and the other issued in conjunction with DAF and Saukel and the Ministry for the East.

"Q. Has he one handy?

"A. I have not got a copy of this pamphlet.

"(Signed) 'Beil".

THE PRESIDENT: Dr. Thoma, the Tribunal relies on Counsel, you know, and when you tell us that this is an important affidavit, we rely on what you tell us, in the opinion of the Tribunal, the reading of the affidavit was an absolute vast of the Tribunal's time.

DR. THOMA: I should like to put another request to the High Tribunal.

I have asked that I be granted an interrogatory for the Reichhauptstellenleiten Dr. Oeppert, of the office of the Delegate of the Fuehrer for the Supervision of the Entire Ideological and Spiritual Enlightenment under Rosenberg. This affidavit has not been granted to me, but I already have it at my disposal and in my hand.

THE PRESIDENT: Has the Prosecution seen it?

DR. THOMA: No, Mr. President, I do not think so. I made my application with the General Secretary. Whether this request has been submitted yet to the Prosecution I do not know.

THE PRESIDENT: Well, the only application that we have got so far as I can see, is an interrogatory to Dr. Kooppen in lieu of Dr. Stellbrecht. Is that the one that you are speaking about now?

DR. THOMA: No, Mr. President, I was granted permission to interrogate Dr. Kooppen instead of Dr. Stellbrecht, and the interrogatory has already been sent off. This, however, is a new application regarding Dr. Oeppert, and that has not been decided

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THE PRESIDENT : You had better submit it to the Prosecution and see whether they have any comment to make on it, and we can take it up tomorrow.

DR. THOMA : Thank you very much, Mr. President.

DR. KUBUSCHOK (Counsel for defendant von Papen) : In the case of Papen, there are eight interrogatories which have not been disposed of. Three of them have just been returned in the last few days and are in the stage of being translated. I ask permission that when I receive my last interrogatory, I may submit all six at one time to the High Tribunal.

Then, without any effort on my part, I received an affidavit from a foreign journalist, Rademacher von Una, in Milan, Italy. This affidavit at present is being translated. I gave this to the British Prosecutor, and he does not object. I ask to be allowed to submit this affidavit with the balance of my documents which are still outstanding.

THE PRESIDENT : Yes, certainly you may submit it. We shall then pass upon it as to its admissibility.

DR. KUBUSCHOK : Thank you, Mr. President.

DR. SEIDL (Counsel for defendants Frank and Hess) : On behalf of the defendant Frank, Mr. President, I ask permission to submit at this time the answers to the interrogatory from the witnesses which have not yet been submitted.

As Exhibit 19 for Frank I should like to submit the reply to the interrogatory by the witness Dr. Ernst Boepple. Boepple was in the Government General. He was a State Secretary, and he has answered 41 questions.

As Frank Number 20, I should like to submit the answers to an interrogatory given by the witness Max Meidinger. Meidinger was chief of the Chancellory of the Government General. He has answered 43 questions.

This interrogatory, as well as the first interrogatory, as far as I could make out, has not been translated as yet, even though I handed these interrogatories in to be translated about ten days ago. However, an English translation is here, along with these interrogatories.

As Frank Number 31 I should like to submit the answers given by the witness Gassner, who answered 49 questions. Gassner was Press Chief in the Government General.

Frank Number 22 will be the number given to the interrogatory deposed by

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Dr. Stepp, last Oberlandesgericht President. In the main he deals with the efforts made by the Defendant Frank in the years 1933 and 1934, in his capacity as a German Minister of Justice for the dissolution of the concentration camp at Dachau.

I should also like to use this opportunity, Mr. President, to point out an error of translation which does not refer to a document of Frank but to a document which was submitted on behalf of the defendant Hess.

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This was not applied to the personal guilt of Hess. However, it is found in the document book, and the document concerned herewith is USA-696, 062-PS. That is a directive of the 13th of March, 1940, the same directive which was mentioned last Saturday in the case of the defendant Bormann, on which occasion the President read figure 4 of this document, which was used.

There is a grave and serious error in translation, which completely distorts the sense of the directive and, if I may say so, it can become very dangerous in its ramifications.

Under the figure 4 the words "unschaedlich gemacht" (made harmless) were translated "liquidated".

THE PRESIDENT: If there is an error in the translation, you had better apply to the General Secretary, and he will have the matter gone into by the Translation Division.

DR. SEIDL: Yes, Mr. President, but things do not seem to work that way. The translator obviously had the feeling himself that his translation was not reproducing the sense quite accurately, because in parentheses he added "unschaedlich gemacht". In my opinion this sentence would have to be translated as follows;

"Likewise, even the parachutists are immediately to be arrested or made harmless." The sense was obviously that the parachutists--

THE PRESIDENT (Interposing): I daresay, Dr. Seidl, but we haven't got the document before us and we don't all of us understand the German language. Therefore, it had better be referred to the Translation Division. It is no good referring it to us.

DR. SEIDL: Then I shall put a written application to the General Secretary, Mr. President.

THE PRESIDENT: Yes.

Have the prosecution any objection to these interrogatories which Dr. Seidl has been dealing with? Have the prosecution had the opportunity of putting cross-interrogatories if they wanted to do so?

COLONEL PHILLIMORE: My Lord, I am told that we think so, with the possible exception of the last one. Perhaps I could look into

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it over-night.

THE PRESIDENT: Very well.

COLONEL PHILLIMORE : I will look into that point and let the Tribunal know.

My Lord, the prosecution have a few documents to put in. I have eight, and I think my friend Mr. Dodd has three. I could do it quickly, but it might be more convenient to do it tomorrow morning.

THE PRESIDENT: We will go into all those documents tomorrow morning. There will be some others on behalf of some of the other defendants. We will also hear the witnesses Kempka and Walkenhorst, I believe it is, whom Dr. Bergold called.

The Tribunal desires Dr. Bergold to be here tomorrow morning in order to be able to examine those witnesses.

The Tribunal will now adjourn .

(A recess was taken until 3 July 1946, at 1000 hours.)